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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE432

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Waterfront Construction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letters of Authorization; request for comments and information.

SUMMARY: NMFS' Office of Protected Resources has received a request from the U.S. Navy (Navy) for authorization to take small numbers of marine mammals incidental to conducting waterfront construction, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at www.nmfs.noaa.gov/pr/permits/incidental/research.htm without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application may be obtained by visiting the Internet at: www.nmfs.noaa.gov/pr/permits/incidental/construction.htm. The Navy is concurrently releasing a draft Environmental Assessment, prepared pursuant to requirements of the National Environmental Policy Act, for the conduct of the construction projects. A copy of the draft EA, which would also support our proposed rulemaking under the MMPA, is available at the same website.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small

numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].”

Summary of Request

On January 19, 2016, NMFS received an adequate and complete application from the Navy requesting authorization for take of marine mammals incidental to waterfront construction conducted by the Navy. The requested regulations would be valid for five years, from July 12, 2017, through July 11, 2022. The Navy plans to conduct work necessary to maintain existing waterfront structures as well as to construct new structures at Naval Submarine Base Kings Bay, GA (NSB Kings Bay). The proposed action may incidentally expose marine mammals occurring

in the vicinity to elevated levels of underwater sound, thereby resulting in incidental take, by Level B harassment only. Therefore, the Navy requests authorization to incidentally take marine mammals.

Specified Activities

To ensure the Navy can continue its mission of supporting the Fleet Ballistic Missile System and Trident Submarine Program, the Navy proposes to repair (including direct repairs and repairs by component replacement) in-water structures at NSB Kings Bay, construct a new Transit Protection System Operational Support Facility, and extend the existing Layberth Pier. These repairs, upgrades, and new construction would (1) address critical damage and mission and safety requirements, (2) limit further deterioration and increase the useful life of the structures, and/or (3) upgrade infrastructure to meet requirements of new submarine technology. Construction will include use of impact and vibratory pile driving, including installation and removal of steel, concrete, and timber piles.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: February 11, 2016.

Perry F. Gayaldo,

Deputy Director,

Office of Protected Resources,

National Marine Fisheries Service.

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